United States Department of Labor
Employees' Compensation Appeals Board

J.M., Appellant	)	
and	)	**Docket No. 24-0310**
	)	**Issued: May 22, 2024**
DEPARTMENT OF AGRICULTURE, U.S. FOREST SERVICE, MASTHEAD ANNEX, Albuquerque, NM, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge
JAMES D. McGINLEY, Alternate Judge

JURISDICTION

On February 6, 2024 appellant, through counsel, filed a timely appeal from a January 11, 2024 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.[3]

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq*.

[3] The Board notes that, following the January 11, 2024 decision, appellant submitted additional evidence to OWCP. However, the Boards *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met his burden of proof to establish bilateral knee and/or hip conditions causally related the accepted July 17, 2022 employment incident.

FACTUAL HISTORY

On July 18, 2022 appellant, then a 43-year-old forestry technician, filed a traumatic injury claim (Form CA-1) alleging that on July 17, 2022 he experienced pain in both knees and hips when carrying a 45-pound load while in the performance of duty. He did not immediately stop work.

OWCP received a July 18, 2022 authorization for examination and/or treatment (Form CA-16) providing a date of injury of July 17, 2022, and describing pain in both knees and hips while at work. In Part B of the Form CA-16, attending physician's report, Dr. Donald E. Solus, a Board-certified family practitioner, related that appellant was injured on July 17, 2022 when he experienced bilateral knee and hip pain while performing a fitness test. He diagnosed bilateral hip strain and bilateral knee pain, and checked a box marked "Yes" indicating that the condition was caused or aggravated by the employment activity described.

On July 18 and 25, 2022 Dr. Solus treated appellant for bilateral knee and hip pain that began while performing a fitness test at work, which involved hiking three miles while carrying a 45-pound pack. His findings on physical examination revealed tenderness of the anterior knee bilaterally, pain with flexion, and tenderness of the greater trochanter area and anterior hip flexor muscle bilaterally. Dr. Solus diagnosed strain of the muscle of the right and left hip and patellofemoral syndrome of the knees. He returned appellant to light-duty work. In an undated form report, Dr. Solus noted that appellant was injured on July 17, 2022 while performing a work capacity test. In reports dated August 8 and August 31, 2022, he noted that appellant reported improvement in his hips and left knee conditions; however, his right knee continued to be painful. Dr. Solus noted physical findings of diffuse mild tenderness over the right knee and pain with flexion. He diagnosed patellofemoral syndrome of the knees and strain of the muscle, fascia, and tendon of the hips and continued light duty. On August 31, 2022 Dr. Solus held appellant off work for three weeks due to anxiety. In a report dated October 19, 2022, appellant reported that his condition was unchanged with right knee pain in the joint and lateral and posterior knee. Dr. Solus diagnosed patellofemoral syndrome of the knees and strain of the muscle, fascia, and tendon of the hips. He opined that the left knee and hip conditions had resolved. Dr. Solus continued to hold appellant off work until the next visit scheduled for November 30, 2022.

In work status notes dated July 18 and 25, and August 8, 2022, Dr. Solus returned appellant to modified duty. In work status notes dated September 21 and October 19, 2022, he noted that appellant remained totally disabled from work until the next visit scheduled for November 30, 2022.

X-rays of the knees dated July 18, 2022 revealed no evidence of acute bony process and minimal degenerative spurring. An x-ray of the hips of the same date revealed no evidence of acute bony process.

In a development letter dated November 17, 2022, OWCP informed appellant of the deficiencies of his claim. It advised him of the type of factual and medical evidence necessary to

establish his claim and provided a questionnaire for his completion. OWCP afforded appellant 30 days to provide the necessary information.

In a report dated September 21, 2022, appellant reported that his condition was unchanged with right knee pain in the joint and lateral and posterior knee. Dr. Solus diagnosed patellofemoral syndrome of the knees and strain of the muscle, fascia, and tendon of the hips. He held appellant off work until the next appointment.

An October 27, 2022 magnetic resonance imaging (MRI) scan of the right knee revealed focal tendinosis proximal portion of the patellofemoral tendon.

In a November 30, 2022 report, Dr. Solus related that appellant's right knee was improved. He diagnosed tendinosis of the right knee and indicated that appellant had been instructed to remain off work until his next appointment on December 21, 2022.

By decision dated December 21, 2022, OWCP accepted that the July 17, 2022 employment incident occurred as alleged, but denied appellant's claim, finding that the medical evidence of record was insufficient to establish a medical condition causally related to the accepted July 17, 2022 employment incident.

On January 10, 2023 appellant requested reconsideration and submitted additional evidence. In support thereof, he submitted an October 31, 2022 report, wherein Dr. Solus noted his review of the October 27, 2022 MRI scan results, which revealed patellar tendinosis. Dr. Solus related that appellant complained of mild right knee pain in the joint and medial anterior knee. He diagnosed tendinosis of the right knee and continued to hold appellant off work until the next appointment on November 30, 2022. In a letter dated January 10, 2023, Dr. Solus noted that appellant was a firefighter and described his current condition as an "overuse" injury. He indicated that appellant's injury was clearly the result of his training for the pack test and occupationally related. Dr. Solus opined that the injury was directly caused by appellant's physical training for work.

By decision dated March 29, 2023, OWCP denied modification of the December 21, 2022 decision.

OWCP received additional evidence. In an April 6, 2023 report, Dr. Solus returned appellant to modified duty, and provided an addendum repeating the findings provided in his January 10, 2023 report.

On December 13, 2023 appellant requested reconsideration. No additional evidence was received.

By decision dated January 11, 2024, OWCP denied modification of the March 29, 2023 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA[4] has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,[5] that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.[6] These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[7]

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it first must be determined whether fact of injury has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. Second, the employee must submit sufficient evidence to establish that the employment incident caused an injury.[8]

The medical evidence required to establish causal relationship is rationalized medical opinion evidence.[9] The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and specific employment incident identified by the employee.[10]

ANALYSIS

The Board finds that appellant has not met his burden of proof to establish bilateral knee and/or hip conditions causally related to the accepted July 17, 2022 employment incident.

In a July 18, 2022 Form CA-16, Dr. Solus diagnosed bilateral hip strain and bilateral knee pain and checked a box marked "Yes" indicating that the condition was caused or aggravated by the employment activity described. The Board has held that when a physician's opinion as to the cause of a condition consists only of a checkmark on a form, without further explanation or

[4] *Supra* note 2.

[5] *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

[6] *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

[7] *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

[8] *T.J.*, Docket No. 19-0461 (issued August 11, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

[9] *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

[10] *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

rationale, that opinion is of diminished probative value and is insufficient to establish a claim.[11] Therefore, this evidence is insufficient to establish appellant's claim.

In notes dated July 18 and 25, 2022, Dr. Solus treated appellant for bilateral knee and hip pain and diagnosed strain of the muscle of the right and left hip and patellofemoral syndrome of the bilateral knees. In reports dated August 8 and 31, 2022, he noted improvement in his bilateral hip and left knee conditions and diagnosed patellofemoral syndrome of the knees and strain of the muscle, fascia, and tendon of the hips. In reports dated September 21, October 19, October 31, and November 30, 2022, appellant reported that his condition was unchanged with right knee pain in the joint and lateral and posterior knee. Dr. Solus diagnosed patellofemoral syndrome of the knees and strain of the muscle, fascia, and tendon of the hips. He opined that the left knee and hip conditions resolved. While Dr. Solus indicated that appellant's medical conditions were work related, he failed to provide medical rationale explaining the basis of his opinion. Without explaining, physiologically, how the specific employment incident caused or aggravated a diagnosed condition, Dr. Solus' opinion on causal relationship is of limited probative value and insufficient to establish appellant's claim.[12]

In an undated form report, Dr. Solus noted that appellant was injured on July 17, 2022 while performing a work capacity test. Similarly, in work status notes dated July 18 and 25 and August 8, 2022, and April 6, 2023, he returned appellant to modified duty. Likewise, in a work status note dated September 21, 2022, Dr. Solus noted that appellant remained totally disabled. However, in these reports he failed to offer an opinion on causal relationship. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition or disability is of no probative value on the issue of causal relationship.[13] Thus, these reports are insufficient to establish the claim.

In a January 10, 2023 report and an April 6, 2023 addendum report, Dr. Solus noted that appellant was a firefighter and his current condition was clearly the result of his training for the pack test and related to his occupation. He opined that the injury was directly caused by appellant's physical training for work. Although Dr. Solus supported causal relationship, he did not offer medical rationale explaining the basis of his conclusory opinion regarding the causal relationship between appellant's bilateral knee and hip conditions and the accepted July 17, 2022 employment incident.[14] The Board has held that a mere conclusion without the necessary rationale is insufficient to meet a claimant's burden of proof.[15] As such, these reports are of limited probative value and are insufficient to establish the claim..

[11] *See A.C.*, Docket No. 21-0087 (issued November 9, 2021); *O.M.*, Docket No. 18-1055 (issued April 15, 2020); *Gary J. Watling*, 52 ECAB 278 (2001); *Lillian M. Jones*, 34 ECAB 379, 381 (1982).

[12] *G.L.*, Docket No. 18-1057 (issued April 14, 2020); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

[13] *See S.H.*, Docket No. 19-1128 (issued December 2, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

[14] *P.L.*, Docket No. 19-1750 (issued March 26, 2020); *Jacqueline M. Nixon-Steward*, 52 ECAB 140 (2000).

[15] *A.T.*, Docket No. 19-0410 (issued August 13, 2019); *E.L.*, Docket No. 17-1632 (issued January 3, 2018).

The record also contains several x-rays and an MRI scan. The Board has held, however, that diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not address whether the accepted employment injuries resulted in appellant's diagnosed medical conditions.[16]

As the medical evidence of record is insufficient to establish causal relationship between appellant's bilateral knee and/or hip conditions and the accepted July 17, 2022 employment incident, the Board finds that appellant has not met his burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish his bilateral knee and/or hip conditions causally related to the accepted July 17, 2022 employment incident.[17]

[16] *L.A.*, Docket No. 22-0463 (issued September 29, 2022); *D.K.*, Docket No. 21-0082 (issued October 26, 2021); *O.C.*, Docket No. 20-0514 (issued October 8, 2020); *R.J.*, Docket No. 19-0179 (issued May 26, 2020).

[17] The Board notes that the employing establishment issued a Form CA-16. A completed Form CA-16 authorization may constitute a contract for payment of medical expenses to a medical facility or physician, when properly executed. The form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. *See* 20 C.F.R. § 10.300(c); *V.S.*, Docket No. 20-1034 (issued November 25, 2020); *J.G.*, Docket No. 17-1062 (issued February 13, 2018); *Tracy P. Spillane*, 54 ECAB 608 (2003).

ORDER

IT IS HEREBY ORDERED THAT the January 11, 2024 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 22, 2024
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge
Employees' Compensation Appeals Board